85 - 1988 (1)

Supreme Court, U.S.
FILED
MAY 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

EDWIN Y. FONDO, M.D.,

Petitioner

v.

MOLLY MISODI AND JUDGE JUDITH SHEINDLIN, INDIVIDUALLY AND AS JUDGE OF THE FAMILY COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Edwin Y. Fondo, M.D.
Appearing in Person (Pro Se)
233 East 69th Street
New York, N.Y. 10018
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75 pp

QUESTIONS PRESENTED

. Whether Judge Judith Sheindlin of Family ourt, Bronx County, erred as matter of law in ailing to dismiss MOLLY MISODI'S Paternity etition as being time-barred by Statute of imitation, Family Court Act, Section 517(a).

. Whether Judge Sheindlin erred as matter of aw in fashioning an evidentiary remedy (legal resumption) to punish EDWIN Y. FONDO for re- using to submit to an HLA Blood Test.

. Whether Judge Sheindlin erred as matter of aw in violating EDWIN Y. FONDO's constitu- ional right to legal counsel during a Fact- inding and Dispositional Hearing on June 3, 983, by denying his application for an adjourn- ent to retain new counsel when his then counsel ithdrew from the proceeding and refused to roceed.

. Whether Family Court Act, Section 532(a) s amended is unconstitutional on its fact.

. Whether New York State Court of Appeals in enying EDWIN Y. FONDO's application for leave nd permission to appeal to New York State

Court of Appeal from an Order of the Appellate Division, First Judicial Department was a denial of EDWIN Y. FONDO's right to due process.

6. Whether United States Court of Appeals, Second Circuit, in affirming the order of the United States District Court, Southern District of New York, ignored the firm establish rule that a defendant is entitled to due process, non-violation of his constitutional rights and representation by legal counsel at all stages of action.

PARTIES TO THE PROCEEDING

The parties to this proceeding are EDWIN Y. FONDO, M.D., a plaintiff below, and MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually and as Judge of the Family Court of the State of New York, County of Bronx, Defendants below.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

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EDWIN Y. FONDO, M.D.,

Petitioner

v.

MOLLY MISODI AND JUDGE
JUDITH SHEINDLIN, INDIVIDUALLY
AND AS JUDGE OF THE FAMILY
COURT OF THE STATE OF NEW YORK,
COUNTY OF BRONX

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Petitioner, Edwin Y. Fondo, M.D., respectfully prays that a Writ of Certiorari issue to review a Judgment Order of the United States Court of Appeals for the Second Circuit entered

in this matter on February 13, 1986, which is included in the appendix attached hereto.

Plaintiff filed a Notice of Appeal in the United States Court of Appeals for Second Circuit on July 11, 1985.

The United States Court of Appeals for the Second Circuit, heard argument on January 31, 1986, and issued an Opinion and Order, dated February 13, 1986, affirming the Judgment Order of the United States District Court for the Southern District of New York.

Your petitioner did not petition the United States Court of Appeals for the Second Circuit for reargument and reconsideration of its Opinion and Order, dated February 13, 1986.

OPINION BELOW

The Judgment Order of the Court of Appeals for the Second Circuit and the Opinion and Order of the United States District Court the Southern District of New York, which appear in the Appendix attached hereto. The Opinion and Order of the District Court was not reported.

JURISDICTIONAL STATEMENT

The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1981, 1983, 1985(2) and (3) and 1988.

STATEMENT OF THE CASE

Procedural Background

This action was commenced by Edwin Y. Fondo, M.D., plaintiff, challenges rulings made by Judge Judith Sheindlin against plaintiff in a paternity action brought in Family Court, Bronx Court, by defendant, Molly Misodi, and the fact that the paternity proceeding was time-barred; plaintiff alleges two constitutional claims: (a) He was denied his right to counsel and (b) Section 532(a) of the Family Court Act is un-

constitutional.

The District Court denied plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction and dismissed plaintiff's Complaint by Judgment Order entered on July 1, 1985. (Judge Pierre L. Leval)

FACTUAL BACKGROUND

The gravamen of the position of petitioner was set forth in the procedural background.

Petitioner is being precluded from raising his constitutional issues and federal claims in the State Court. See Allen v. McCurry, 449 U.S. 90 and Tang v. Appellate Division, 1st Dept., 487 F.2d 138. In the case of Stone v. Powell, 428 U.S. 465, the Court concluded that Section 1983 was McCurry's only route to a federal forum for his constitutional claim and directed the trial court to allow him to proceed to trial unencumbered by collateral estoppel.

Petitioner has exhausted all his legal

remedy at law in the Courts of the State of New York and his only recourse is a review of the State Courts' ruling in this Court.

REASON FOR ALLOWANCE OF THE WRIT

This case presents several incidents in the Courts below in which petitioner's rights were violated and he was denied due process:

a) On June 3, 1983, at a Factfinding and Dispositional Hearing in Family Court, Bronx County, Judge Judith Sheindlin denied Edwin Y. Fondo's application for an adjournment to retain new counsel when his then counsel withdrew from the paternity proceeding and refused to proceed.

b) That Section 517(A) of Family Court Act specifically states in relevant part, that:

> "Proceeding to establish the paternity must be instituted during pregnancy of the mother or after the birth of the child, but shall not be brought after the elapsed of more than two years from the birth of the child, unless paternity has been acknowledged by the father in writing or by furnishing support."

The documentary evidence in the record of Family Court, Bronx County shows that the child Edwin Misodi, was born on August 31, 1978 and that the paternity petition was filed on September 24, 1980, or some three (3) weeks after the statute of limitation had expired. Simply stated, the proceeding was untimely commenced and therefore barred by statute of limitation.

c) That petitioner on appeal raised the issues of "his denial of legal counsel," "paternity proceeding was time-barred by statute of limitation" and "his denial of due process" and Section 532(A) of F.C.A. is unconstitutional" through his then counsel in New York Appellate Division, First Department and on January 31, 1984, the Order of filiation and support of Judge Judith Sheindlin, dated June 3, 1983, was affirmed without opinion. (Emphasis Added).

d) That petitioner on an application for leave and permission to appeal to New York State Court of Appeals, again raised the

identical issues: "His denial of legal counsel," "Paternity proceeding was time-barred by statute of limitation," and "His denial of due process," "Section 532(A) of F.C.A. is unconstitutional," through his then counsel and on September 11, 1984, his application was denied as untimely. (Emphasis Added).

e) That in the United States District Court, for the Southern District of New York, Judge Pierre N. Leval denied petitioner's motion and dismissed his complaint, but in his memorandum and order, dated June 27, 1985, held in part that:

> "Plaintiff's most palpable complaint is to the manner in which the trial was conducted. Plaintiff was forced to proceed on June 3, 1983 without counsel. His attorney withdrew because the Judge refused to grant an adjournment to permit the attorney to obtain the minutes of a prior hearing held a year earlier. Plaintiff's attorney had repeatedly ordered the minutes but they had never been delivered. Plaintiff's attorney withdrew in protest of being forced to proceed to trial without what he considered essen-

> tial cross-examination material. The Judge then refused plaintiff an adjournment to obtain other counsel and at trial found paternity against plaintiff based on his failure to submit to the HLA test. There may well be merit to plaintiff's argument that the Judge acted unfairly."

f) That in the United States Court of Appeals for Second Circuit, it affirmed the Order of Judge Pierre N. Leval in this case, and in its opinion in part held:

> "Appellant does, however, make two constitutional claims: He was denied his right to counsel and Section 532(A) of Family Court Act is unconstitutional. However, both of these claims were raised in the State Court Appellate proceedings and were rejected. Because New York Courts would bar relitigation of these claims in the State Court, the Appellant is precluded from relitigating these issues in the Federal Courts. See Allen v. McCurry, 449 U.S. 90 (1980) (rejecting an exception for Section 1983 suits to traditional rules of collecteral estoppel). Even if these constitutional issues were not raised in State Court,

> appellant is barred from raising them here, as they could have been litigated in State Court. See Migra v. Warren City School District Board of Education, 104 S.Ct. 892 (1984).
>
> "In effect, he seeks in federal court review of the New York State Courts' rulings. A final judgment of a State Court is reviewable only in the Supreme Court of the United States. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). This Court lacks subject matter jurisdiction to review the correctness of these State Court decision."

That both the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit, denied petitioner's application for injunctive relief and dismissed his complaint on the same grounds in this case. Petitioner believes that under the circumstances that the writ should be allowed and that a determination and resolution on New York State Courts' rulings and the constitutional issues be resolved, would benefit everyone in the State of New York

that is effected by such law.

That petitioner, appearing Pro Se, is not familiar with all of the Courts' procedures. However, he has made every effort to obtain a determination on the issues as they applied to him in this case. In the interest of Justice, either on the constitutional issues or on the merits of the Courts' ruling and on due process grounds this writ should be allowed.

Under the federal full faith and credit statutes, 28 U.S.C. Section 1738, a Federal Court is mandated to give the same res judicata effect to prior State Courts' judgment as would be given to judgment in the state whose Court rendered it. However, it was held in case of E.G. Kremr v. Chemical Construction Corp., 456 U.S. 461, 466, (1982) that a federal court can avoid state res judicata rules only when a plaintiff, in his subsequent federal action, invokes a federal statute which was intended to override Section 1938.

CONCLUSION

For the reasons stated herein, the writ of certiorari should be allowed.

Dated: May 5, 1986

Edwin Y. Fondo, M.D.

EDWIN Y. FONDO, M.D.
Appearing in Person (Pro Se)

A P P E N D I X

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 85-7615

As a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 13th day of February, one thousand nine hundred and eighty-six.

EDWIN Y. FONDO,

Plaintiff-Appellant,

v.

MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually and as Judge of the Family Court of the State of New York, County of Bronx,

Defendants-Appellees.

On Appeal from the United States
District Court for the
Southern District of New York
(S.D.N.Y. Civil No. 85 Civ. 0083 [PNL[)

Argued: January 31, 1986

Before: OAKES, WINTER and MINER

Circuit Judges

(Opinion and Order filed

February 13, 1986)

Edwin Y. Fondo, M.D.,
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Marshall Green, Esq.
The Legal Aid Society
Attorney for Defendant-Appellee
Molly Misodi
953 Southern Boulevard
Bronx, New York 10459
(212) 991-4600

OPINION AND ORDER OF THE COURT

HON. JAMES L. OAKES,
HON. RALPH K. WINTER,
HON. ROGER J. MINER,
Circuit Judges

Edwin Fondo, pro se, appeals from an Order of the United States District Court for the Southern District of New York, Pierre N. Leval, Judge, dismissing his action brought pursuant to 42 U.S.C. § 1983 (1982). In June, 1983, appellee, Judge Judith Sheindlin of the New York State Family Court, Bronx County, declared Fondo the father of Edwin Misodi in a paternity action brought by appellee Molly Misodi. The Appellate Division affirmed without opinion. The Appellate Division and the Court of Appeals denied his applications for leave to appeal and to appeal as of right. He did not seek review in the Supreme Court of the United States. Appellant then brought this action asserting virtually the same claims raised in State Court in the United States District Court. We

affirm.

Appellant raises five claims on appeal. He challenges the correctness of three Family Court rulings: that the paternity suit was not time-barred; that Fondo acknowledged paternity through support payments; and that a negative inference could be drawn from Fondo's refusal to submit to a blood test. Fondo raises no constitutional claims with respect to these three issues. In effect, he seeks in Federal Court review of the New York State Courts' rulings. A final judgment of a State Court is reviewable only in the Supreme Court of the United States. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). This Court lacks subject matter jurisdiction to review the correctness of these State Court decisions. Id. Even if we had jurisdiction to hear these claims, they were litigated in Fondo's appeals in the State Courts and res judicata principles bar us from rehearsing them.

Appellant does, however, make two constitutional claims: he was denied his right to counsel and Section 532(A) of the Family Court

Act is unconsitutional. However, both of these claims were raised in the State Court appellate proceedings and were rejected. Because New York Courts would bar relitigation of these claims in the State Courts, the appellant is precluded from relitigating these issues in the Federal Courts. See Allen v. McCurry, 449 U.S. 90 (1980) (rejecting an exception for Section 1983 suits to traditional rules of collateral estoppel). Even if these constitutional issues were not raised in State Court, appellant is barred from raising them here, as they could have been litigated in State Court. See Migra v. Warren City School District Board of Education, 104 S.Ct. 892 (1984).

Fondo's claim that he did not have a full and fair opportunity to litigate his claims in the State Court because he was denied leave to appeal to the New York Court of Appeals is without merit.

JAMES L. OAKES

RALPH K. WINTER

ROGER J. MINER

Circuit Judges

N.B. Since this statement does not constitute a formal opinion of this Court and is not uninformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other Court.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN DOE,

Plaintiff

- against -

MOLLY MISODI,

Defendant.

85 Civil 83 PNL

JUDGMENT

Plaintiff having moved for sanctions against Ms. Misodi alleging violation of a court order of January 4, 1985, permitting plaintiff to proceed under the pseudonym John Doe, and the defendant having moved to dismiss the complaint under Rule 12(b), F.R. Civ. P. and the said motions having come before the Honorable Pierre N. Leval, U.S.D.J., and the Court thereafter on June 27, 1985, having handed down its memorandum and order denying plaintiff's motion and granting defendant's motion, it is

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed.

Dated: New York, New York
June 29, 1985

_____

CLERK

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 7-1-85

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN DOE,

Plaintiff

- against -

MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually and as Judge of the Family Court of the State of New York, County of Bronx,

Defendants.

85 Civ. 0083 (PNL)

MEMORANDUM AND ORDER
Dated: June 27, 1985

PIERRE N. LEVAL, U.S.D.J.

This action challenges rulings made by Judge Sheindlin against plaintiff John Doe in a paternity action brought in Bronx County Family Court by defendant Molly Misodi, and challenges the constitutionality of Section 532(a) and (b) of the Family Court Act. The action is brought pursuant to 42 U.S.C. § 1981, 1983 1985(2) and (3) and 1988. Plaintiff seeks injunctive relief and $500,000.00 in damages against defendant Misodi. The action was also brought against Judge Sheindlin but was dismissed by reason of her judicial immunity.

Plaintiff moves for sanctions against Misodi alleging violation of a court order of January

3, 1985 permitting plaintiff to proceed under the pseudonym John Doe. Defendant Misodi moves to dismiss the complaint under Rule 12(b), F.R.Civ.P Plaintiff's motion is denied, and defendant's motion is granted.

Contempt

Plaintiff moves for an order to hold defendant Misodi and her attorney in contempt and impose sanctions for violating the court's order of January 4, 1985 permitting plaintiff to prosecute this action under the pseudonym John Doe. Plaintiff complains that Misodi's memorandum of law in support of her motion to dismiss intentionally, deliberately and repeatedly referred to plaintiff by his true name in an attempt to embarrass and annoy plaintiff.

Ian Feldman, the attorney who drafted Misodi's papers, presents several reasons why plaintiff's true name was used. First, Mr. Feldman states he interpreted the order to require that only the caption be limited to the name John Doe. Second, the action was

commenced on January 3, 1985 with a summons, complaint and order to show cause all containing the plaintiff's true name. Mr. Feldman states he assumed the entire court file would be made unavailable to the general public after the January 4 order permitting the pseudonym, thereby amply protecting plaintiff's identity. Third, Mr. Feldman states his motion to dismiss required the filing of state court briefs and orders as exhibits, in support of his contention of res judicata, all of which contained plaintiff's true name. Finally in March 1985, plaintiff filed another action in Bronx Supreme Court against the same defendants presenting the same issues and using his true name on all the papers without requesting any pseudonym order. Defendant contends that no disrespect was intended, nor was there any design to embarrass plaintiff.

I find no basis for the imposition of sanctions as demanded by plaintiff. There was no order requiring defendant to refer to plaintiff as John Doe. The order merely permitted plaintiff to prosecute the action under

a pseudonym and to amend the caption.

Plaintiff's motion for contempt or sanctions is denied.

Motion to Dismiss

Defendant Misodi moves to dismiss the complaint. Defendant contends that the complaint fails to state a claim for relief and is barred by the doctrines of res judicata and collateral estoppel.

The allegations in the complaint against defendant Misodi are insufficient to state a claim upon which relief may be granted. The thrust of plaintiff's complaint is that Judge Sheindlin made errors of law in certain rulings, and that a Section of the Family Court Act is unconstitutional. The only mention of actions taken by Misodi in the complaint, beyond identifying her as a party (Complaint, p.2, Paragraph 5), is the statement that she filed a paternity petition in Family Court, p.3, Paragraph 8). Misodi's name is mentioned only three more times in the complaint, twice in the context of plaintiff

moving to dismiss her paternity petition (p.3 Paragraph 9; p. 4 Paragraph 17,) and once in the context of plaintiff being held to have acknowledged paternity by making outlays of money to Misodi (p.4 Paragraph 18). The allegations are insufficient to support any cause of action, including an action under Sections 1981, 1983, 1985 and 1988. Therefore, the complaint against Misodi is dismissed.

Insofar as the complaint is based on alleged unconstitutionality of § 532 of the Family Court Act, it is without merit. That section provides that, on motion of any part, the court shall order all the parties to submit to one or more blood grouping tests. The section further provides for when those tests will be admissible in evidence. Section 532 has no constitutional defect. See Merrill v. Ralston, 95 A.D.2d 177, 465 N.Y.S.2d 507 (1983); Smith v. Jones, 120 Misc.2d 834, 466 N.Y.S.2d 643 (Fam.CT. 1983); Jane L. v. Rodney B., 108 Misc.2d 709, 438 N.Y.S. 2d 726 (Fam. Ct. 1981). To the extent plaintiff complains

that Judge Sheindlin drew inferences against him as to the finding of paternity based on his failure to submit to an HLA test, that was within the judge's discretion and raises no issue of unconstitutional adjudication. Molly M. v. Edwin F., 118 Misc. 2d 768, 461 N.Y.S.2d 709 (Fam. Ct. 1983).

Plaintiff's most palpable complaint is to the manner in which the trial was conducted. Plaintiff was forced to proceed on June 3, 1983 without counsel. His attorney withdrew because the Judge refused to grant an adjournment to permit the attorney to obtain the minutes to a prior hearing held a year earlier. Plaintiff's attorney had repeatedly ordered the minutes but they had never been delivered. Plaintiff's attorney withdrew in protest of being forced to proceed to trial without what he considered essential cross-examination material. The Judge then refused plaintiff an adjournment to obtain other counsel and at trial found paternity against plaintiff based on his failure to submit to the HLA test.

There may well be merit to plaintiff's argument that the Judge acted unfairly. These contentions, however, do not reach the level of a violation of due process giving rise to an action in federal court to void the state court judgment.

Plaintiff's remedy is to raise his contentions seeking appellate of other review in the state court.

Conclusion

Plaintiff's motion to hold the defendant in contempt is denied. Defendant's motion to dismiss the complaint is granted.

Dated: New York, New York
June 27, 1985

SO ORDERED:

PIERRE N. LEVAL, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN DOE,

Plaintiff

- against-

MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually and as Judge of the Family Court of the State of New York, County of Bronx,

Defendants.

85 Civ. 0083(PNL)

MEMORANDUM AND ORDER
Dated: June 21, 1985

PIERRE N. LEVAL, U.S.D.J.

This action challenges rulings made by defendant, Judge Sheindlin against plaintiff John Doe in a paternity action brought in Bronx County Family Court by defendant, Molly Misodi, and challenges the constitutionality of Section 532(a) and (b) of the Family Court Act. The action is brought pursuant to 42 U.S.C. § 1981, 1983, 1985(2) and (3) and 1988. Plaintiff seeks injunctive relief and $500,000.00 in damages.

Plaintiff moves for entry of a default judgment against both defendants, pursuant to Rule 55, F.R.Civ. P. Defendant Judge Sheindlin moves to dismiss the complaint

under Rule 12(b), F.R.Civ.P. Plaintiff's motion is denied, and defendant's motion is granted.

Default

Plaintiff moves for entry of a default judgment against both defendants. Grant or denial of a motion for default judgment lies within the discretion of the trial court and the party making the motion is not necessarily entitled to a default judgment as of right even though a defendant may be technically in default. 6J. Moore, Federal Practice, Section 55.05[2], pp.55-52-54 (2d Ed. 1985); 10 Wright, Miller & Kane, Federal Practice and Procedure; Civil 2d, § 2685, pp. 420-29 (1985). Both defendants have now entered the action, making motions to dismiss the complaint. Judge Sheindlin was served on January 8. Plaintiff contends that defendant failed to answer or move by January 28, 1985, thereby entitling him to a default judgment. (Plaintiff did not attach to his motion a clerk's certificate of the notation of the default, contrary to Local Civil Rule 10(b).)

Defendant Judge Sheindlin's attorney wrote to chambers on January 16, 1985, requesting permission to move to dismiss with a waiver of the customary premotion conference. A copy of this letter was sent to plaintiff. On January 24, 1985, Judge Sheindlin's counsel was given permission to move to dismiss. A motion to dismiss was filed on January 30, 1985.

Defendant, Misodi was unrepresented at the time this action was filed. She appeared before the Court pro se on January 11, 1985, and was given one month from that date to answer plaintiff's order to show cause. By letters of February 8 and 19, Ian Feldman of the Legal Aid Society, who filed a notice of appearance as Misodi's attorney, requested permission to move to dismiss and requested an extension of time to move until March 15, 1985. Those requests were granted on February 27, 1985. Therefore, Misodi was in compliance with the schedule for motions set and approved by the Court.

Both defendants acted in good faith in

complying with the rules and scheduling orders of this court. Plaintiff's motion for default judgment is denied.

Motion to Dismiss

Judge Sheindlin moves to dismiss the complaint on the grounds of failure to state a claim for relief, absolute judicial immunity and absence of federal subject matter jurisdiction.

Plaintiff claims Judge Sheindlin made errors of law in rulings on various issues in the paternity proceeding against plaintiff in 1983. The complaint seeks only damages, and not injunctive relief against the Judge. Although the complaint lists Judge Sheindlin "individually and as Judge of the Family Court," the only conduct complained of is conduct performed in her judicial capacity.

It is well established that Judges have absolute immunity from damages liability in civil actions, including suits under the Civil Rights Act of 1871, for judicial acts taken within their statutory jurisdiction,

broadly construed. Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 1983 (1980); Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099 (1978); Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967); Green v. Maraio, 722 F.2d 1013 (2d Cir. 1983) (Pierce, J.). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the "clear absence of all jurisdiction." Stump, 435 U.S. at 356-67, 98 S.Ct. at 1105 (quoting Bradley v. Fisher, 13 Wall. 335, 351 (1872).)

Plaintiff argues that Judge Sheindlin's acts were outside the scope of her judicial capacity, rendering her personally responsible. In support of this argument, plaintiff contends that Judge Sheindlin displayed favoritism and partiality toward Misodi's attorney in the paternity proceeding. However, the acts plaintiff complains of were all "function[s] normally performed by a judge," Stump, 435 U.S. at 362, 98 S.Ct. at 1107, including issuing

orders and rulings on applications by defendant's and plaintiff's counsel and conducting hearings.

Judge Sheindlin had jurisdiction over the subject matter before her and was acting in her capacity as a judge. The complaint against Judge Sheindlin must be dismissed based on her absolute judicial immunity.

Conclusion

Plaintiff's motion for entry of a default judgment is denied. Judge Sheindlin's motion to dismiss the complaint is granted.

Dated: New York, New York
June 21, 1985

SO ORDERED:

PIERRE N. LEVAL, U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EDWIN Y. FONDO, M.D.,

Plaintiff

- against -

85 CIV 0083 (PNL)

ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually and as Judge of Family Court of the State of New York, County of Bronx,

Defendants.

Upon the annexed Affidavit of Edwin Y. Fondo, M.D., sworn to the 31st day of December 1984, and upon the Verified Complaint filed simultaneously herewith and upon the Memorandum of Law filed herewith, and it appearing therefrom that the defendant unless restrained forthwith will continue to deprive and violate plaintiff's civil rights, privileges and immunities secured by the Fifth and Fourteenth Amendments of the United States Constitution and the rights guaranteed by the Due Process and Equal Protection clauses of the Fourteenth Amendments and further for an order restraining and enjoining the defendants from enforcing an

order of filiation and order of support of Judge Judith Sheindlin of Family Court, Bronx County, dated June 3, 1983, and good and sufficient cause appearing therefor, it is hereby

ORDERED, that defendant, Molly Misodi, appear for a conference with counsel on January 11, 1985, at 2:30 P.M. in the afternoon of that day or as soon thereafter as counsel can be heard at the Courthouse located at Foley Square, in Room 318, New York, New York, as to why an order should not be made preliminary enjoining and restraining the defendants pursuant to Rule 65 of the Federal Rules of Civil Procedure during the pendency of this action, the defendants, their agents, successors, assignees, principals, assignors and persons acting in concert with them from proceeding further and enforcing the order of Judge Judith Sheindlin, dated June 3, 1983, in an action entitled "IN THE MATTER OF PATERNITY PETITION OF MOLLY MISODI, PETITIONER, VS. EDWIN Y. FONDO, RESPONDENT" under Docket

No: P-4604/80, pending in Family Court, Bronx County, it is

FURTHER ORDERED, that service of true copies of this order together with copies of the papers upon which it was granted, shall be made upon defendant, Molly Misodi, personally, or upon any attorney who shall have appeared for the defendant in this action, on or before the 8th day of January 1985, at 5:00 P.M., be deemed good and sufficient service of this order.

Dated: New York, New York
January 3, 1985

ISSUED AT 4:20 P.M.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EDWIN Y. FONDO, M.D.,

Plaintiff

- against -

AFFIDAVIT IN SUPPORT OF APPLICATION

MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually, and as Judge of the Family Court of the State of New York, County of Bronx,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Edwin Y. Fondo, M.D., being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action and am fully familiar with all the facts set forth herein.

2. This affidavit is being submitted in support of plaintiff's instant application for a temporary restraining order and a preliminary injunction. The basis for my application is as follows:

a) On June 3, 1983, at a Factfinding and Dispositional Hearing in Family Court, Bronx County, before Judge Judith Sheindlin,

plaintiff's then attorney's withdrawal and refusal to proceed, and Judge Sheindlin's denial of plaintiff's application for an adjournment to retain new counsel, (Exhibit "D"), such denial violated plaintiff's constitutional rights.

b) At the conclusion of the Factfinding and Dispositional Hearing in Family Court, Bronx County, on June 3, 1983, Judge Sheindlin issued an order of filiation and order of support (Exhibit "C") violating plaintiff's right to due process and equal protection mandated by the U.S. Constitution.

c) The Family Court's, Bronx County, action on Edwin Y. Fondo's motion to dismiss Molly Misodi's paternity petition on the grounds that the proceeding was not timely commenced within two years of the birth of her son, Edwin Young Misodi, born August 31, 1978, as required by Section 517(a) of the Family Court Act. The court below (Family Court, Bronx County) substituted its judgment and the place and stead of the requirement

mandated by Section 5179a), F.C.A.

d) Family Court Act, Section 532(a) as amended, is unconstitutional on its face. Section 532(a) of F.C.A. is unconstitutional on the grounds that: (1) it constitutes an unlawful delegation of legislative power to the Courts; (2) it is unconstitutionally void and vague; and (3) it denies putative fathers equal protection of the law and unduly prejudices paternity proceedings.

3. The above-entitled action derives from a paternity proceeding instituted in Family Court, Bronx County, by Molly Misodi on or about September 24, 1980, for an order naming Edwin Y. Fondo, M.D., as the natural father of her child, Edwin Young Misodi, a minor (Exhibit "A").

4. Judge Sheindlin violated Edwin Y. Fondo's constitutional rights to counsel during the Factfinding and Dispositional Hearing in Family Court, Bronx County on June 3, 1983, by denying his application for an adjournment to

retain new counsel. The right to counsel in an adversary procceding where, as here, substantial rights and interest of the parties will be affected, is paramount. It is incumbent upon the court to provide each party with an opportunity to seek counsel of his or her choosing. It is apparent from the facts and circumstances of the paternity proceedings in Family Court, Bronx County, that the Court's undue haste to try the case on June 3, 1983, was inappropriate and unwarranted in light of Edwin Y. Fondo's then counsel's withdrawal from the case and refusal to proceed in said hearing.

5. Judge Sheindlin erred as a matter of law in refusing and failing to dismiss Molly Misodi's paternity petition in Family Court, Bronx County, on the ground that it was untimely commenced; Section 517(a) of Family Court Act, reads in part as follows:

> "Proceeding to establish the paternity of a child may be instituted during the pregnancy of the mother or after the birth of the child but shall not be brought after the elapse of more than two years from the birth of the child, unless paternity

has been acknowledged by the father in writing or by furnishing support"(EMPHASIS ADDED)

6. That as a result of the said order of filiation and order of support of Judge Sheindlin of Family Court, Bronx County, dated June 3, 1983, Edwin Y. Fondo, under the threat of arrest and incarceration was directed by Judge Sheindlin to pay Heff Bernstein, Esq., counsel to Molly Misodi, as and for counsel fee the sum of $5,000.00, at the rate of $125.00 per hour (Exhibit "E") and was further directed to post and deposit with the Clerk of Family Court, the sum of $15,000.00 in cash, to insure support payments pursuant to her order of filiation and order of support, dated June 3, 1983, (Exhibit "F").

7. That the acts and actions of Judge Sheindlin were arbitrary and capricious and are unlawful, intentional and malicious and are designed and calculated to destroy Edwin Y. Fondo, M.D., as a physician, husband and father.

8. I am married to Pamela Fondo and am the

father of two children.

9. Plaintiff, on or about November 1983, after an inordinately delay by Molly Misodi and her counsel, appealed the said order of filiation and order of support of Judge Sheindlin, dated June 3, 1983, to the Appellate Division, First Judicial Department, by an order dated January 31, 1984, the Appellate Division affirmed without an opinion, the said orders of Judge Sheindlin (Exhibit "G").

10. On or about March 25, 1984, plaintiff's counsel made an application to the Appellate Division, First Judicial Department, for leave and permission to appeal its said order dated January 31, 1984, to New York State Court of Appeals. By order dated May, 1984, the Appellate Division denied said motion (Exhibit "H").

11. On or about July 16, 1984, plaintiff's counsel made a motion to New York State Court of Appeals, for an order allowing an appeal to be taken by plaintiff from an order of

unanimous affirmance of the Appellate Division, First Judicial Department, pursuant to C.P.L.R. 5602(a)(1). By an order dated September 11, 1984, the Court of Appeals denied said motion for leave to appeal as untimely (Exhibit "I").

12. On or about October 1984, plaintiff's counsel made a motion for reargument and reconsideration to New York States Court of Appeals, based upon its said order dated September 11, 1984. By an order dated November 29, 1984, the Court of Appeals denied said motion for reargument and reconsideration (Exhibit "J").

13. That plaintiff was and still is of the opinion that an appeal to New York State Court of Appeals was required in the interest of substantial justice.

14. That the questions of law plaintiff raised, such as:

a) Family Court erred as a matter of law in failing to dismiss Molly Misodi's paternity petition as being barred by the statute of limitations, Family Court Act,

Section 517(a);

b) Family Court erred as a matter of law in fashioning an evidentiary remedy (legal presumption) to punish Edwin Y. Fondo, M.D., for refusing to submit to an HLA blood test;

c) Family Court erred as a matter of law in violating Edwin Y. Fondo's constitutional right to legal counsel during the Factfinding and Dispositional Hearing on June 3, 1983, by denying his application for an adjournment to retain new counsel when his then counsel's withdrawal from the proceeding and refusal to proceed.

d) Family Court Act, Section 532(a) and (b) as amended, is unconstitutional on its face; have not been passed upon by New York States Court of Appeals and plaintiff is now precluded from seeking such determination by that judicial body.

15. That as a result of the acts and actions and the order of Judge Sheindlin of Family Court, Bronx County, dated June 3, 1983, plain-

will continue unless the acts, actions and order of Judge Sheindlin, dated June 3, 1983, is restrained and its enforcement is enjoined by this Court.

16. Plaintiff has incurred legal and support payments in excess of $30,000.00 to date and the same is continuing, as a result of Judge Sheindlin's said acts, actions and order dated June 3, 1983.

17. Plaintiff's wife, Pamela Fondo, is in the process of filing a divorce action against him as a result of the said acts, actions and order of Judge Sheindlin, dated June 3, 1983.

18. That plaintiff's medical practice has suffered and will continue to suffer due to his inability to allocate sufficient time to his practice due to the mental anguish sustained as a result of the said acts, actions and order of Judge Sheindlin dated June 3, 1983.

19. That plaintiff has exhausted all of his legal remedy at law in the Courts of the State of New York and his only recourse is in this Court.

20. That plaintiff's civil and constitutional rights secured and guaranteed by the First, Fifth and Fourteenth Amendments of the U.S. Constitution and rights guaranteed by the due process and equal protection of the U.S. Constitution and the immunities and privileges secured as well as his rights under Article I of the Constitution of the State of New York, have been violated by the defendant(s) herein.

21. This is a case in which delay will destroy rights guaranteed under law and monetary relief will never compensate for the wrong being done.

WHEREFORE, plaintiff respectfully requests an order of this Court be issued as follows:

a) Granting plaintiff an immediate preliminary injunction and restraining order enjoining the defendant(s), their agents, servants, and/or representatives, enforcing the order of filiation and order of support of Judge Judith Sheindlin, of Family Court, Bronx County, dated June 3, 1983, under Docket No: P-6404/80;

b) For such other and further relief as

to this Court deems just and proper, including a declaratory judgment.

No previous application has been made for the relief sought herein.

EDWIN Y. FONDO, M.D.

Sworn to before me this
31st day of December 1984.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EDWIN Y. FONDO, M.D.,

Plaintiff

- against - VERIFIED COMPLAINT

MOLLY MISODI and JUDGE JUDITH SHEINDLIN, Individually and as Judge of the Family Court of the State of New York, County of Bronx,

Defendants.

Plaintiff, Edwin Y. Fondo, M.D., appearing in person and complaining of the defendants herein, respectfully alleges as follows:

Jurisdiction

1. This action is brought pursuant to the Civil Rights Laws of the United States of America, more particulary, United States Code, Title 42, Sections 1981, 1983, 1985(2)(3) and 1988, and the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments. Jurisdiction is founded on Title 28, U.S.C. § 1331(a) and 1343(1)(2)(3)(4) and the aforementioned statutory and constitutional provisions. The amount in controversy exceeds $10,000.00 exclud-

ing interest and costs.

a) Plaintiff also sues for preliminary injunction and a temporary restraining order pursuant to 28 U.S.C. § 1981, 1983, 1985(2)(3) and 1988 and the First, Fifth and Fourteenth Amendments of the United States Constitution.

Nature of Complaint

2. This is a civil action by the plaintiff for a preliminary injunction and a temporary restraining order to enjoin and to prevent deprivation under the color of law of certain rights, privileges and immunities secured to the plaintiff by the United States Constitution and under Title 42 U.S.C. § 1981, 1983, 1985(2)(3) and 1988. The suit seeks redress of the deprivation of both civil and constitutional rights violated by the defendants herein under the color of law.

a) This court has jurisdiction of state of law claims under the doctrine of pendant jurisdiction.

Parties

Plaintiff (Edwin Y. Fondo, M.D.)

3. Plaintiff, Edwin Y. Fondo, M.D., at all

times herein mentioned was and still is a citizen of the State of New York and resides at East 72nd Street, New York, New York.

4. Edwin Y. Fondo, M.D., is a physician duly licensed to practice medicine in the State of New York, specializing in Surgical Oncology (general, vascular and breast surgery) with offices for the practice of his profession at 233 East 69th Street, New York, New York.

Defendant (Molly Misodi)

5. Upon information and belief, defendant, Molly Misodi, at all the times herein mentioned, was and still is a citizen of the Republic of Cameroons and is a resident of the State of New York and resides at 51 Buchanan Place, Bronx, New York.

6. Upon information and belief, defendant, Molly Misodi, at all the times herein mentioned, was and still is the natural mother of Edwin Young Misodi, a child who was born on August 31, 1978.

Defendant (Judge Judith Sheindlin)

Judge Judith Sheindlin, at all the times herein mentioned, was and still is a citizen of the State of New York and resides in Bronx, New York.

8. Upon information and belief, defendant, Judge Judith Sheindlin, at all the times herein mentioned, was and still is a Judge of the Family Court of the State of New York, County of Bronx, with chambers located at 215 East 161st Street, Bronx, New York.

Background

9. On or about September 24, 1980, defendant, Molly Misodi, filed a verified paternity petition with the Clerk of the Family Court, Bronx County, for an order of filiation naming the plaintiff, Edwin Y. Fondo, M.D., as the natural father of her child, Edwin Young Misodi, a minor (hereinafter called "Edwin Young"). (Exhibit "A").

10. On or about February 25, 1981, plaintiff, Edwin Y. Fondo, M.D., in Family Court, Bronx County, made a motion to dismiss Molly Misodi's paternity petition on the grounds that the

paternity proceedings was not timely commenced within two years of the birth of the child, Edwin Young, as required by § 517 of the Family Court Act (Exhibit "B").

11. On or about June 3, 1983, at a Fact-finding and Disposition Hearing, in Family Court, Bronx County, before Judge Judith Sheindlin, plaintiff's then attorney, Frederick C. Hayes, Esq., withdrew as plaintiff's counsel in open court and refused to proceed. Plaintiff's application to Judge Judith Sheindlin for an adjournment to retain new counsel was denied and he was compelled by said court to remain in the court during the said hearing without being represented by an attorney (Exhibit "C").

12. At the conclusion of the Factfinding and Dispositional Hearing held on June 3, 1983, in Family Court, Bronx County, in which plaintiff's then attorney refused to participate and plaintiff's application for an adjournment to retain new counsel was denied, the Family Court below issued an order of filiation and an order

of support, (Exhibit "D").

13. On or about November 4, 1983, plaintiff appealed the order of filiation and order of support signed by Judge Judith Sheindlin of Family Court, Bronx County, on June 3, 1983, to the Appellate Division of Supreme Court, First Judicial Department and on January 31, 1984, the Appellate Division of Supreme Court, issued an order affirming without an opinion, an Order of Filiation and order of support of Judge Judith Sheindlin, of Family Court, Bronx County, dated June 3, 1983, (Exhibit "E").

14. On or about March 25, 1984, plaintiff's counsel made an application to the Appellate Division of Supreme Court, First Judicial Department, for leave and permission to appeal its order affirming the order of filiation and order of support of Judge Judith Sheindlin, dated June 3, 1983, to the Court of Appeals of the State of New York, by an order dated May 1, 1984, the Apnellate Disvision of Supreme Court denied said motion to appeal to the Court of Appeals, (Exhibit "F").

15. On July 16, 1984, plaintiff's counsel made a motion to New York State Court of Appeals for an order allowing an appeal to be taken by plaintiff, Edwin Y. Fondo, M.D., from an Order of unanimous affirmance, of Appellate Division, First Judicial Department, pursuant to C.P.L. 5602(a)(1). By an order dated September 11, 1984, the Court of Appeals denied said motion for leave to appeal as untimely, (Exhibit "G").

16. On or about October 1984, plaintiff's counsel made a motion for reargument and reconsideration to New York State Court of Appeals, based upon its order dated September 11, 1984. By order dated November 29, 1984, the Court of Appeals denied said motion for reargument and reconsideration, (Exhibit "H").

Plaintiff's Contention

17. That he is now precluded from raising the questions of law which are novel and of significant importance, to New York State Court of Appeals, and such an appeal is required in the interest of substantial justice.

18. Defendant, Judge Judith Sheindlin of Family Court, Bronx County, erred as a matter of law in failing to dismiss Molly Misodi's paternity petition as being barred by the statute of limitations, pursuant to Family Court Act Section 517(a).

19. Defendant, Judge Judith Sheindlin, of Family Court, Bronx County, erred as a matter of law in finding that Edwin Y. Fondo, M.D., acknowledged paternity by making occasional and undelineated outlays of money to Molly Misodi.

20. Defendant, Judge Judith Sheindlin, of Family Court, Bronx County, erred as a matter of law in fashioning an evidentiary remedy (legal presumption) to punish Edwin Y. Fondo, M.D., for refusing to submit to an HLA blood test.

21. Defendant, Judge Judith Sheindlin, of Family Court, Bronx County, erred as a matter of law in violating Edwin Y. Fondo, M.D., the plaintiff's constitutional rights to counsel during the Factfinding Hearing conducted on

June 3, 1983, by denying his application for an adjournment to retain new counsel when his then attorney withdrew and refused to proceed.

22. That New York State Family Court Act, Section 532(a) and (b) as amended, is unconstitutional on its face. Section 532(a) of F.C.A. as amended is unconstitutional on the grounds that; (a) It constitutes an unlawful delegation of legislative power to the Courts; (b) It is unconstitutionally void for vagueness; and (c) It denies putative fathers equal protection of the law and unduly prejudices paternity proceedings.

23. That the right to counsel is an adversary proceeding, where, as here, substantial rights and interests of the parties will be effected, is paramount. It is incumbent upon the Court to provide each party with an opportunity to seek counsel of his or her choosing. It is apparent from the facts and circumstances in the paternity proceeding in the Family Court below, that the Court's undue haste to try the case at the Factfinding and Dispositional Hearing

on June 3, 1983, was inappropriate and unwarranted in light of Edwin Y. Fondo's then counsel's withdrawal from the case and refused to proceed in said hearing.

24. That the acts and actions of defendants were arbitrary, unlawful and capricious and have subjected plaintiff to immediate and irreparable damages and such will continue unless restrained by this Court and such acts and actions were intentionally and malicious and were designed and calculated to destroy plaintiff as a physician, husband and father.

25. That plaintiff's civil and constitutional rights secured and guaranteed by the First, Fifth and Fourteenth Amendments of the United States Constitution and the immunities and privileges secured as well as his rights under Article I of the Constitution of the State of New York have been violated.

WHEREFORE, plaintiff demands judgment against the defendants as follows:

a) Permanent injunction and restraining order enjoining the defendants, their agents, servants and/or representatives from enforcing

the order of filiation and order of support signed by Judge Judith Sheindlin of Family Court, Bronx County under Docket No: P-6408/80;

b) An order and/or judgment declaring Section 532 of New York Family Court Act, unconstitutional on its face, on the grounds that: (1) it constitutes an unlawful delegation of legislative power to the courts; (2) it is unconstitutionally void for vagueness; and (3) it denies putative fathers equal protection of the law and unduly prejudices paternity proceedings.

c) Award plaintiff the sum of $500,000.00 as and for damages;

d) Award plaintiff costs and reasonable attorney's fees;

e) A declaratory judgment vacating and enjoining the acts, actions and order of Judge Judith Sheindlin, dated June 3, 1983, of Family Court, Bronx County, including the enforcement of such acts and orders as an unconstitutional state act by a state official;

f) For such other and further relief as to this Court deems just and proper.

Edwin Y. Fondo, M.D.
Appearing in Person
233 East 69th Street
New York, N.Y. 10021
(212) 988-3000

V E R I F I C A T I O N

STATE OF NEW YORK)
COUNTY OF BRONX, NEW YORK) ss.:

EDWIN Y. FONDO, M.D., being duly sworn, deposes and says:

I am the plaintiff in the within action;

I have read the foregoing complaint and know the contents thereof; that the same is true to deponent's knowledge, except as to those matter alleged upon information and belief, and to those matters, I believe it to be true.

EDWIN Y. FONDO, M.D.

Sworn to before me this
29th day of December 1984.

NOTARY PUBLIC, STATE OF NEW YORK

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court,
held at Court of Appeals
Hall in the City of Albany
on the eleventh day of
September A.D. 1984

PRESENT, HON. LAWRENCE H. COOKE,
Chief Judge Presiding

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1 Mo. No. 737
In the Matter of the Paternity
Petition of

MOLLY MISODI,

Respondent,

vs.

EDWIN FONDO,

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed as untimely (CPLR 5513[b]).

DONALD M. SHERAW
Clerk of the Court

At a term of the Appellate
Division of the Supreme Court
held in and for the First
Judicial Department in the
County of New York, on
January 31, 1984

PRESENT—HON. Joseph P. Sullivan - Justice Presiding
David Ross
John Carro
J. Robert Lynch
Bentley Kassal, Justices.

MOLLY MISODI,

Petitioner-Respondent,

- against -

EDWIN FONDO,

Respondent-Appellant.

The above-named respondent-appellant having moved for leave to appeal to the Court of Appeals from the order of this Court entered on January 31, 1984,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion, and the papers filed in opposition or in relation thereto; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied.

E N T E R:

ALAN BERGER
DEPUTY CLERK.

At a term of the Appellate
Division of the Supreme Court
held in and for the First
Judicial Department in the
County of New York, on
January 31, 1984

PRESENT—HON. Joseph P. Sullivan - Justice Presiding
David Ross
John Carro
J. Robert Lynch
Bentley Kassal, Justices.

MOLLY MISODI,

18751

Petitioner-Respondent,

- against -

EDWIN FONDO,

Respondent-Appellant.

An appeal having been taken to this Court by the respondent-appellant from an order of filiation and support of the Family Court of the State of New York, Bronx County (Judith Sheindlin, J.), entered on June 3, 1983, which adjudged appellant to be the father of subject child, and ordered appellant to pay support and to post a sum as security for future payments,

And said appeal having been argued by Lawrence

S. Cumberbatch of counsel for appellant, and by Jeff Bernstein of counsel for respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same hereby is affirmed.

Respondent shall recover of appellant $75 costs and disbursements of this appeal.

E N T E R:

JOSEPH J. LUCCHI
Clerk.

At a Term of the Family Court of the State of New York, City of New York, held in and for the County of Bronx, at 900 Sheridan Avenue, New York, on June 3, 1983.

PRESENT:

HON. JUDITH SHEINDLIN

J.F.C.

In the Matter of the Paternity Petition of

MOLLY MISODI,

Petitioner,

- against-

EDWIN FONDO,

Respondent.

ORDER OF FILIATION

Docket #P-6404/80

The above-named petitioner having filed a petition, sworn to September 20, 1980, alleges that the above-named respondent is the father of a male child, Edwin Young Misodi, born out of wedlock to Molly Misodi on August 31, 1978, and that said mother and/or child is or is likely to become a public charge; and

Said respondent having appeared before this Court to show cause why a declaration of paternity, order of support and other relief prayed

for by the petition should not be made and the said respondent having denied the allegation of the petitioner; and

The issues having duly come onto be heard before this Court:

NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto, it is

ADJUDGED AND DECLARED, that the above-named respondent is the father of said child.

E N T E R:

JUDITH SHEINDLIN

J.F.C.

At a Term of the Family Court of the State of New York, City of New York, held in and for the County of Bronx, at 900 Sheridan Avenue, New York, on June 3, 1983.

PRESENT:

HON. JUDITH SHEINDLIN
J.F.C.

In the matter of the Paternity Petition of

MOLLY MISODI,

Petitioner,

- against-

EDWIN FONDO,

Respondent.

ORDER OF SUPPORT

Docket #P-6404/80

Respondent: Your wilful failure to obey, may after court hearing, result in your committment to jail for a term not to exceed six months, for contempt of court.

The above-named petitioner having filed a petition in this Court sworn to September 21, 1980 alleging that the above-named respondent is chargeable with the support of the dependent named therein, and

Respondent having appeared before this Court

to answer the petition, having been advised by the Court of the right to counsel, and to show why an order for support and other relief prayed for in the petition should not be granted; and respondent having denied the allegations of the petition; and

The matter having come on to be heard before this Court;

NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto; it is

ORDERED AND ADJUDGED that the above-named respondent is chargeable with the support of the following person and is possessed of sufficient means and able to earn such means to provide the payment of the sum of $100.00 per week, as follows: plus $50.00 arrears of $12,800.00 total $150.00; name Edwin Young Misodi D/O/B: August 31, 1978; and it is further

ORDERED, that the above-named respondent upon notice of this order, pay or cause the

aforesaid amount to be paid to the support unit, such payments to commence on June 10, 1983, and it is further

ORDERED, that the respondent provide respondent's changes of address at all times should he move from the address last known to the Court by reporting such change to the Support Collection Unit at 900 Sheridan Avenue, Bronx, New York 10451, and respondent shall further provide arrears fixed at $12,800.00, as of order of support of $100.00 per week retroactive to September 1980, pursuant to Section 545 Family Court Act. Ordered support of $100.00 per week plus $50.00 per week toward arrears. Ordered totaling $150.00 per week to begin June 10, 1983.

Dated: June 3, 1983

E N T E R:

JUDITH SHEINDLIN

J.F.C.